

TOWN OF GREENFIELD
ZONING BOARD OF APPEALS

February 4, 2014

REGULAR MEETING

A regular meeting of the Town of Greenfield Zoning Board of Appeals is called to order by Taylor Conard at 7:30 p.m. On roll call the following members are present: Taylor Conard, Michelle Granger, Joseph Szpak, and Denise Eskoff. Kevin Veitch is absent.

January 7, 2014 MINUTES

MOTION: M. Granger

SECOND: D. Eskoff

RESOLVED, that the Zoning Board of Appeals waives the reading of and accepts the minutes of January 7, 2014, as submitted

VOTE: Ayes: Conard, Eskoff, Granger, Szpak

Noes: None

Absent: Veitch

NEW BUSINESS

DENNIS & KAREN DOWEN – Area Variance

North Creek Road

Dennis and Karen Downen are present and are reapplying for an area variance which has expired. T. Conard states that this is a land locked parcel with a permanent easement which was previously approved. Board reviews the file.

RESOLUTION – D. & K. Downen, Area Variance

MOTION: M. Granger

SECOND: J. Szpak

RESOLVED, that the Zoning Board of Appeals accepts the application of Dennis and Karen Downen for an area variance for property located at 1146 North Creek Road, TM#124.-1-30.2 as complete and sets a public hearing for Tuesday, March 4, 2014 at 7:30 p.m.

VOTE: Ayes: Conard, Eskoff, Granger, Szpak

Noes: None

Absent: Veitch

DISCUSSION

M. Granger states that one thing that was discussed a little bit at the Planning and Zoning Conference about maybe reviewing our building permit application and looking at how some other Towns do it to see if there is anything that we can do to improve that process so that we are not forced into a

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situation again where someone who is building comes in and says that they are inside one of the setbacks. Or a situation where the information that is put on the application appears to be correct but indeed it is not actually correct and is based on previous zoning and there has been no updated survey done. She would like to avoid the Board being put in that position of someone asking for forgiveness, basically, after the fact. It seems like most of the time those situations can be avoided. She states that she does not know if some of the other Board members feel like we should review some of those other applications and see if we can change the language. She does not even know what the process is. D. Eskoff states that the Planning Board has to be involved, they get the same documents and the Building Department has to be able to work with them also. She states that she did start looking at some of them. M. Granger states that there should be some type of fine or penalty imposed, is that something that would have to come from the Town Board. T. Conard states that it would because it would have to become a local law. D. Eskoff states that maybe it is a matter of the Boards meeting to discuss some concerns and then take it to the Town Board. T. Conard suggests coming up with a list of things as a Board that we feel need addressing. He states that he thinks that at some point P. Lunde is going to try to meet with T. Yasechak and T. Conard, at the very least. He states that if he has a list of the ZBA concerns, then he won't forget any and make sure that they are presented. J. Szpak states that we can generate our concerns and recommendations, and can represent ourselves at a Town Board meeting or Planning Board meeting. He asks if we are making a recommendation that a review be done or that we, the ZBA, do a review. M. Granger states that it is a two part thing – what are the concerns that we have from our perspective and then sharing that with the Planning Board and the Town Board. She feels that this continues to come up and it seems that part of it is putting the applicant on notice that there is a higher amount of responsibility that goes here, in terms of the application, and perhaps if there is some way to put a fine or penalty that is associated with that. She states that the last case seemed to be saying they didn't know the zoning changed and yet we hold other people accountable to it. In discussion with one of the attorneys who presented at the Planning and Zoning Conference, down on Long Island they tell you to take the building down, they don't care. It is being done in other areas where basically although someone claims that they didn't know it was off, they are told sorry, but you have to take the building down. Then there was a case law that was presented that said if there is reasonable reliance on the applicant's behalf from the Code Enforcement Officer, then you can't turn around and tell them to take the building down. It seems to her that the process may be a little bit too relaxed to continue to have this issue come before the Board and if we are really trying to be consistent with the zoning that we have in the Town of Greenfield, can we do something better to work with the applicants and surveyors. D. Eskoff states that you put people on notice which is important to do. J. Szpak states that he thinks that he understands and agrees with those concerns. He was talking more about what if anything was M. Granger recommending as the process other than what T. Conard had said was that we as a Zoning Board can get all that information together and then we could either request to review that with the Planning Board or with the Town Board, or are we asking here are our concerns, do with it what you want. He does not want to be a victim here, we want to be part of the solution. M. Granger states that part of what she and D. Eskoff discussed at the conference, was that maybe we look at the building permit application process, because that is where it begins. Someone submits the plan and says this is what we are doing. She would like to see us, as a Board, take that building permit application and walk thru it and say, how can we improve the language and the accountability and the notice in this. Then perhaps share this with the Planning Board and the Town Board to see how they view the process. Right now she has not gone through the building permit for the Town of Greenfield, but the last case came before us and said they did not know that the zoning had changed. We have people who come before us all the time who claim the same thing, but we have to deny variances because of certain circumstances. J. Szpak questions, what if we ask as a Board to be walked thru the process by G. McKenna or other people who are engaged and involved, so that that would be step one and then step two is based on that, or we could do it in the same meeting, we could look and explore ideas that we think may be helpful in that process. Then we could make a recommendation. D.

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Eskoff states that she thinks a combined effort is definitely necessary on all levels or it is just not going to work. J. Szpak asks who owns the building permit and that process. R. Rowland states G. McKenna. J. Szpak states that then maybe G. McKenna and whoever else is an expert, we could ask for them to walk us thru it with the intention that we are looking for ways that could potentially mitigate some of these problems that we are seeing. We would have an opportunity to collectively put together the kind of issues that we see, and what could we maybe do. Have a working meeting to see if we come up with something, then make a recommendation. M. Granger states that clearly there is case law out there that says that there is reasonable reliance, basically on the information that this Town approves, then we are going to have to grant the variance because in an Article 78 proceeding, we are going to be ruled against. Whatever we need to do a little differently so that there is reasonable reliance but that we don't have to give someone a variance because we have missed something in the process. D. Eskoff states that she does not know where the building permit forms come from. R. Rowland states that G. McKenna created his own. D. Eskoff states that so then some effort is put into it and a lot of times they are taken from others. Things change and you have to adapt, you are looking at the building process, but may not be looking at all those changes that are going on in the zoning and planning world. Obviously it has to come from G. McKenna. M. Granger states that the question becomes since he is no longer really authorized to come to the meetings, how does that work? R. Rowland states that the ZBA can request his presence. T. Conard states that we will put together a list and he will talk to P. Lunde because he is concerned about it too because he was on the ZBA and he had suggested whether there was a way to put a fine into the law. M. Granger states that she thinks that we could formulate the list now. Can there be a fine put into that process? Can the application be further clarified to say even something as simple as by signing this application you acknowledge that the information submitted is in compliance with the current zoning laws for the Town of Greenfield? Because we need to put the responsibility back on the applicant and at the same time we need to make sure that before the building permit is issued that it is reviewed and that it is in compliance with the current zoning law so that there is not unreasonable reliance on what the Town has approved. T. Conard states that on the last case, even if you are going back on the applicant, it was the mistake of the surveyor but the client would have had to have gone after the surveyor. M. Granger states that it may be that we need to disclose, as part of that process, that you acknowledge that it is in compliance and if it is not you further understand that worst case scenario, if your building is fully constructed you could be asked to take that building down. She does not think that we have explained the process fully to anyone. Those would be the kind of issues that she would wonder about in terms of the fine, the language being tightened up and that there would be some kind of statement that you are accepting in the terms. These would be the questions she would want put to P. Lunde and to G. McKenna. G. McKenna might feel that he can put the answers into a memo to the Board. D. Eskoff states that she would want to see the building permit application. T. Conard states that any other issues, such as in J. Szpak's case with the 'forever wild' – does it mean you cut all the trees down and it is still forever wild because you don't put a house on it? That should be defined too a little better. M. Granger states that would go back to amending the Code. T. Conard states that the code has been amended for other things since the last Comprehensive Plan was done. D. Eskoff states that she still believes that we need to look more closely at the agricultural/animal statutes.

Meeting adjourned 7:46 p.m., all members in favor.

Respectfully submitted,

Rosamaria Rowland
Secretary